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New Circular 230 Standards/Revisions

Ethical Standards for Tax Professionals

Millions of American taxpayers depend on tax professionals to prepare returns and advise them on tax-related matters. By helping clients comply with tax laws, tax professionals play a critical role in shaping those clients' attitudes and behaviors. While most people who prepare tax returns and represent taxpayers before the IRS are professional, honest, and provide excellent service to their clients, unfortunately there are some who do not maintain ethical standards and follow the law.

The 2005-2009 IRS Strategic Plan contains four enforcement objectives, one of which is to: Assure that attorneys, accountants and other tax practitioners adhere to professional standards and follow the law.

Enrolled Preparers

The IRS Office of Professional Responsibility (OPR) is responsible for setting, communicating, and enforcing standards of competence, integrity, and conduct among tax practitioners – specifically attorneys, CPAs, enrolled agents and others who represent taxpayers before the IRS. Treasury Department Circular No. 230 contains the rules and regulations governing attorneys, CPAs, enrolled agents, enrolled actuaries, and appraisers who represent taxpayers before the IRS.

In general, there are four broad categories of misconduct which may be subject to disciplinary action by OPR: 1) misconduct while representing a taxpayer; 2) misconduct related to the practitioner's own return; 3) giving a false opinion, recklessly, or through gross incompetence; or 4) misconduct not directly involving IRS representation.

OPR receives referrals regarding possible misconduct from IRS employees and through complaints from tax practitioners and other private citizens. Complaints should be in letter format and include the person's name, address, telephone number, designation (i.e. attorney, CPE, enrolled agent, etc.), a detailed description of the allegations, and any supporting documents. Fax to 202-622-2207 or mail to:

IRS
Office of Professional Responsibility
Attn: SE:OPR – Room 7238/IR
1111 Constitution Ave, N.W.
Washington, DC 20224

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Once a complaint is received, it is assigned to an attorney for investigation. If the evidence indicates the allegations, taken as true, would constitute a violation of Circular 230, a letter is sent to the practitioner informing him or her of the charges and affording the individual of their right to respond in writing or by requesting a conference with the OPR office.

Possible sanctions by OPR include disbarment, suspension, censure, and reprimand. Disbarment is the permanent revocation of a practitioner's privilege to represent taxpayers before the IRS. A suspension is the revocation of a practitioner's privilege to practice before the IRS for a certain period. A censure is a public reprimand. A reprimand is a private admonishment from the Director to the practitioner.

Prior to the refocusing of OPR, the primary nature of most of their investigations involved personal tax compliance issues of tax practitioners. They are now actively seeking cases that have a higher impact on the tax gap and compliance.

In one recent case, an enrolled agent was suspended for threatening false 1203(b) allegations. During the course of representing a taxpayer in a collection matter, he repeatedly told an IRS Revenue Officer that he would "bring up charges of 1203" if the RO followed a specific course of action.

OPR also still seriously investigates cases involving tax professionals not in compliance with their own tax obligations. Examples of recent suspensions and disbarments related to practitioners' own personal tax obligations include:

- A CPA was suspended after an IRS audit revealed improper personal expenditures were claimed as business deductions and income tax returns were not timely filed.
- An enrolled agent was suspended after making misleading statements on federal employment tax returns.
- A CPA was disbarred and an attorney indefinitely suspended for failing to file returns for multiple years and failing to pay significant delinquent tax liabilities.

Circular 230 was recently modified to include rules on written tax opinion standards. The rules became effective for advice written after June 20, 2005, and were developed to ensure tax professionals do not provide inadequate advice. The modifications also increase transparency by requiring tax professionals to make disclosures if advice is incomplete.

In other recent developments, IRS has granted public accountants in the states of New Jersey, Pennsylvania, and Rhode Island the same practice privileges as certified public accountants in those states, subject to the provisions of Circular

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230. The Circular 230 recognition was announced for Pennsylvania in October 2004 and for New Jersey and Rhode Island in April 2005.

Unenrolled Preparers

Practice before the IRS by persons who are not attorneys, CPAs, or enrolled agents is limited. Often referred to as “unenrolled preparers”, these persons are governed by the guidelines in Revenue Procedure 81-38 (which is reproduced in Publication 470). IRS Area Directors are responsible for enforcement of Revenue Procedure 81-38.

Complaints against unenrolled preparers should be directed to 1-800-829-0433. When information is received indicating an unenrolled preparer’s conduct or practice has been inappropriate according to the guidelines in Revenue Procedure 81-38, an IRS Area Director has the authority to issue a written notice proposing a determination of ineligibility to practice.

The notice will explain the basis for the proposal and will contain a request for a written reply within 30 days. The preparer may also request a conference with the Area Director or the Area Director’s delegate. After review of any reply or after a conference, if one is held, the Area Director will notify the preparer in writing of his final determination. For more information, refer to Section 10 in Revenue Procedure 81-38.

Civil Penalties

In addition to sanctions, U.S. law also authorizes the assessment of civil penalties against enrolled and unenrolled tax professionals:

- Negligent or intentional disregard of tax rules and regulations – Internal Revenue Code (IRC) Section 6694(a)
 - \$250 fine per return or claim
- Willful attempt to understate the liability for tax - IRC Section 6694(b)
 - \$1,000 fine per return or claim
- Aiding and abetting understatement of tax liability - IRC Section 6701(a)
 - \$1,000 fine per return (\$10,000 for corporations)
- Failure to furnish copy of return - IRC Section 6695(a)
 - \$50 fine per return
- Failure to sign a tax return - IRC Section 6695(b)
 - \$50 fine per return
- Failure to keep copy of tax return or a list of taxpayers for 3 years - IRC Section 6695(d)
 - \$50 fine per return

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References:

www.TaxTalkToday.tv: View an archive of the May 10, 2005 broadcast of Tax Talk Today which featured an overview of the IRS Office of Professional Responsibility

[Circular 230](#): Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service

[Final New Rules on Written Standards](#)

[Proposed Regulations Related to Tax Exempt Bonds](#)

[Publication 470](#): Limited Practice Without Enrollment

[Publication 947](#): Practice Before the IRS and Power of Attorney

[IR-2004-152](#): IRS and the Treasury Department Amend Circular 230 to Promote Ethical Practice by Tax Professionals

[IR-2005-59](#): IRS, Treasury Clarify Circular 230 Written Opinion Standards

[Frequently Asked Questions About OPR](#)

[Frequently Asked Questions About Enrolled Agents](#)

[Frequently Asked Questions About Complaints Against Tax Professionals](#)

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